

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **SEN. JACK WELLS**, on March 10, 1999 at 3:20 P.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Bill Glaser, Vice Chairman (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis (R)
Sen. John Hertel (R)
Sen. Bob Keenan (R)
Sen. Debbie Shea (D)
Sen. Mike Sprague (R)
Sen. Spook Stang (D)
Sen. Jack Wells (R)

Members Excused: Sen. Daryl Toews, Chairman (R)
Sen. Mignon Waterman (D)

Members Absent: None.

Staff Present: Eddy McClure, Legislative Branch
Janice Soft, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 236, 3/3/1999; HB 590,
3/3/1999, HB 588 3/3/1999
Executive Action: HB 588 TABLED

In the absence of **CHAIRMAN DARYL TOEWS**, the meeting was chaired by **SEN. JACK WELLS**.

HEARING ON HB 236

Sponsor: REP. JOE BARNETT, HD 32, Belgrade

Proponents: Harry Erickson, Superintendent, Belgrade Schools
Lance Melton, Montana School Boards Association

Opponents: None

Opening Statement by Sponsor:

REP. JOE BARNETT, HD 32, Belgrade, said the bill dealt with both transferring and receiving school boards agreeing on property transfers before they could occur. He said current law stated only the receiving district had to agree, i.e. the transferring district had nothing to say. He suggested current law was a property rights issue because there was taking without permission. Currently, such an issue went through a hearing process with the county superintendent making the decision and the transferring board having nothing to say. **REP. BARNETT** commented in time, if this were allowed to continue, the tax base of the losing district could be eroded. He said the New Section on Page 10 contained amendments added by the House, and the basic language was if litigation was started previously to this bill, it would not be effected by the July 1, 1999, date.

Proponents' Testimony:

Harry Erickson, Superintendent, Belgrade Schools, said the bill was a matter of local control, fairness and working with boards. He said there was a case where a person built a house on land which had been in his district since 1891. They wanted their children to attend school in another district and after they discovered their property was in the Belgrade district, they asked for their property to be transferred out of the district. He reiterated since current law made it necessary for only one board to act on the request, it would be possible for the other board to be unaware. **Mr. Erickson** commented under present law, the matter was taxation without representation because if a piece of land was transferred from his district, the taxes would increase. He said he rose in support of **HB 236**.

Lance Melton, Montana School Boards Association (MSBA), said they strongly supported the bill and urged the Committee to consider it could be a stabilizing force of SB 422, which recently passed out of the Committee. In many instances, these isolated pockets were driven by parents wanting to escape the obligation of paying tuition. He said the real problem with existing law was going to district court was a waste of time because if a hearing was held and the formula met, the process was over. **Mr. Melton** suggested the bill was a good means of promoting local control and keeping districts from fighting each other.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 7.3}

Questions from Committee Members and Responses:

SEN. BARRY "SPOOK" STANG asked if the bill restored the language to what it was before the law was changed during the last legislative session. **Lance Melton** said he didn't think so because before that, there was no process to allow the county superintendent to hold a hearing. He said **HB 236** still allowed the county superintendent to hold the hearing and have full discretion to determine if the decision was unfair for the district to withhold approval. However, the bill did indicate the hearing could still take place, but the district's decision to approve or disapprove would play strongly in the decision.

SEN. ALVIN ELLIS asked why both Bozeman and Belgrade schools were not allowing outside-district students to attend. **Harry Erickson** said Belgrade allowed those students in but Bozeman did not. Belgrade had a strict tuition policy which stated the conditions to be met, i.e. class size, staffing, etc. He stated as far as he knew, Belgrade was about the only area school which allowed out-of-district students to attend.

SEN. ELLIS said he was in favor of students attending where they wanted, but he was not in favor of gerrymandering districts. He asked if there were several examples of this happening. **Mr. Erickson** said he could think of about six instances.

SEN. STANG said both cases in his Senate District involved districts wanting to transfer land from one to the other because parents wanted their children to attend school in that particular district. In both cases, the losing district didn't agree so it went to the County Superintendent of Schools. He wondered how the bill would help a situation where a district didn't agree, yet, the parents, en masse, wanted their children to attend in another district and felt the land should follow the students. **Lance Melton** suggested **HB 236** couldn't rectify the situation, but **SB 422** could. He suggested it was a cumbersome process to have the territory follow the student, but **SB 422** said a student would be able to attend in an adjacent district and the sending district would have to pay. He argued if **SB 422** passed the House, it was time to allow people to use that process, i.e. not move the territory.

SEN. STANG said in his case, the sending district didn't want the students to leave. **Mr. Melton** said present law, without **SB 422**, dictated parents would have to pay the tuition. If, however,

that bill passed, the sending district would have to pay, which was much more streamlined and didn't threaten local control.

SEN. STANG commented if SB 422 didn't pass the House, how would **HB 236** address his situation where the sending district didn't want to lose the students, yet would be forced to pay. **Mr. Melton** said without SB 422, the bill before the Committee would be different. He said he would still support **HB 236** and admitted **SEN. STANG** was correct in that if SB 422 didn't pass, the issue would be different. He explained current law of putting the whole decision before the County Superintendent with no standards of review was detrimental to local control.

{Tape : 1; Side : A; Approx. Time Counter : 16.4}

Closing by Sponsor:

REP. JOE BARNETT said he considered the bill getting closer to local control. He believed school boards operated under the "child benefit theory", which allowed them to come to an agreement. He suspected, if **HB 236** passed, in the future there would be negotiation between school boards regarding property transfers. He again said it was a matter of fairness and property rights to have both school boards agree on the transfer before it took place. He agreed to amendments to remove CI-75 language and said **SEN. DON HARGROVE** would carry the bill.

HEARING ON HB 590

Sponsor: **REP. BOB LAWSON, HD 80, Whitefish**

Proponents: **Lance Melton, Montana School Boards Association**
Katy Majors, School Board Member
Peter Donovan, Certification Advisory Council
Wayne Buchanan, Board of Public Education
Janice Doggett, Office of Public Instruction
Phil Campbell, Montana Education Association &
Montana Federation of Teachers
Larry Fasbender, Department of Justice
REP. PAUL SLITER, HD 76, Somers

Opponents: **Scott Creighton, American Civil Liberties Union**

Opening Statement by Sponsor:

REP. BOB LAWSON, HD 80, Whitefish, introduced this bill as coming because of requests from his constituents, both inside and

outside his school community, and from the Montana School Boards Association. He said he was a former educator who, both formerly and presently, "stepped to the plate" to willingly submit to extra scrutiny. He commented he felt comfortable with the degree of background checks, as stated in the bill. The groups of people affected by **HB 590**: (1) All new applicants for teacher certification, whether they were teachers, specialists, or administrators, were required to have background checks done by the Office of Public Instruction and pay a fee of \$60; (2) Applicants for uncertified aide or volunteer school district positions involving regular unsupervised access to students were optionally checked. The fee was \$32 and could either be assessed the applicant or absorbed by the district; (3) Applicants of a business or organization which provided care, treatment, education, training, instruction, supervision or recreation for children were also optionally checked by the business or organization. The fee in this case was also \$32, and the cost could either be paid by the applicant or absorbed by the business. He said all groups had access to due process, and direction was given the Department of Justice.

{Tape : 1; Side : A; Approx. Time Counter : 23.5}

Proponents' Testimony:

Lance Melton, Montana School Boards Association (MSBA), read his written testimony **EXHIBIT(eds54a01)**.

Katy Majors, School Board Member, Stevensville, said she was asking favorable consideration of the bill in behalf of the children of the Bitterroot Valley. She related how 11 years ago, in Colorado, she had been fingerprinted so she could obtain her license as a private child care provider. She was happy to know the other children in that county had the same protection as those in her care. She said her district had a constant list of substitutes and volunteers for the board to approve and currently there wasn't much they could do regarding background checks. She appealed to the Committee's sense of responsibility to protect Montana's children through fingerprinting, though she knew it was not fail-safe. She explained people in positions listed in the bill developed trust relationships with students and if the employees proved to be untrustworthy, children's lives could be ruined.

Peter Donovan, Certification Advisory Council, said the Council unanimously supported **HB 590** because Montana was the only state which didn't have a policy on using fingerprinting in background checks. He referred to information in **EXHIBIT(eds54a02)** for

supporting statements but admitted only a small segment of the population would abuse children. He stated there was a phrase in the certification profession called "passing the trash" which referred to abusers moving from employer to employer.

{Tape : 1; Side : A; Approx. Time Counter : 34.5}

Wayne Buchanan, Board of Public Education, said the Board wanted to convey its support for the bill. He asked why educators were included in the list of people to be fingerprinted and answered: (1) The state issued a certificate, which implied an investigation validated the individual had an academic background; (2) Teachers had a special relationship with children, under the law, which no other profession enjoyed, i.e. teachers were in the place of parents. They could require students to meet them alone in classrooms, be in a certain place to receive special tutoring, etc. He commented a vast minority of educators engaged in this abusive behavior, though the Board removed an average of one to two certificates per year for some kind of legal problem having to do with children. He referred to an instance where a mother in Arizona wrote him a letter about an applicant who had molested boys in a summer camp. He related the Board would never have known the applicant had a problem if it had not been for this letter. He stressed the only purpose for fingerprinting was to verify the applicant was who he or she claimed to be, and after that was established, the fingerprints could be discarded. He reminded everyone many Montana teachers and administrators came from other states, but other professions did not experience that influx. These other states required fingerprinting but Montana did not; therefore, **HB 590** was necessary.

Janice Doggett, Office of Public Instruction (OPI), said they supported **HB 590**, but cautioned districts not to be lulled into a false sense of security because of the fingerprinting background check. It was still critically important to engage in proper hiring practices through reference checks; in fact, OPI had a on hiring information manual which was available to school districts. She explained the fiscal note was based on research from other states regarding the extra staff and staff time it would take to get the program started.

Phil Campbell, Montana Education Association (MEA) and Montana Federation of Teachers (MFT), said they stood in support of the bill, though initially, they struggled with the concept because they had concerns regarding right of privacy. They wanted to balance representing their employees' rights with the need to protect students in the schools. They felt **HB 590** was a good compromise because employers should know about backgrounds of

individuals who had past problems in relating to youth. He said they agreed with the bill allowing due process, once the red flag went up after the background check.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Larry Fasbender, Department of Justice, said they supported the bill because it provided guidelines for the Department and provided funding for hiring staff to do the checks. He said he looked at staff requirements for the state of Florida and they suggested one FTE for every 5,000 checks performed. **Mr.**

Fasbender said the Department already did about 27,000 name checks and with the change in federal legislation, that number could triple. They hoped to process the increased number of checks with only one more FTE; of course, that would depend on how many "hits" there were. He reiterated they thought the bill was good legislation in being able to operate under the new federal guidelines, and they currently did name checks; however, those name checks only generated information regarding crimes committed in Montana. The fingerprint background check allowed information about crimes committed outside Montana, i.e. gave a good, positive identification (ID).

REP. PAUL SLITER, HD 76, Somers, said he gave support to the bill because he intended to introduce a similar bill to require background checks for people who joined Big Brothers and Sisters programs. He reported the concept was good because there were opportunities for not-so-nice people to come into direct contact with youth through camping trips, meetings, etc. The bill provided insurance those individuals would be checked before that happened.

Opponents' Testimony:

Scott Crichton, American Civil Liberties Union (ACLU), said they didn't oppose criminal background checks; however, fingerprinting should not be interposed with those checks because much could be learned about a prospective employee without getting fingerprints. He said federal government's mechanisms worked to lull states into expanding the database of fingerprints. He said Americans were in the information age and they ought to be frightened at what information was being gathered on them, i.e. social security numbers used for conducting business and many other facets, instead of retirement, as was the original purpose. Fingerprints were originally designed to track criminals, but currently, they were being used as a prerequisite to get drivers licenses in Georgia. He maintained the Clinton administration expanded the invasion of individual privacy through increased wiretaps, fingerprinting, etc. Even though the federal

government didn't require the above, it seemed they did because the perception was all other states were doing it so Montana should also. He suggested competing interests had to be balanced with individual rights; perhaps the next thing would be DNA testing on employees. There was the concept of the "slippery slope", which meant as new invasions into people's privacy were introduced, they never seemed to stop, but kept progressing further. In other words, fingerprinting would not be the end, but the beginning, of conditions for employment; in fact, Rhode Island started out with fingerprinting but now was looking at using the National Crime Information Center (NCIC). Oregon, in 1993, instituted checks for new hires only; however, it progressed to every existing teacher being required to be fingerprinted. He suggested there were better ways to conduct background checks on people.

{Tape : 1; Side : B; Approx. Time Counter : 15.2}

Questions from Committee Members and Responses:

SEN. ALVIN ELLIS asked why photographs were used on Montana drivers licenses. **Larry Fasbender** said it was a method of positive identification (ID).

SEN. ELLIS asked what method, other than fingerprinting, could be used to positively identify someone on a national level. **Mr. Fasbender** said there was no other method because the NCIC check was only a fingerprint check; it did not do a name check.

SEN. ELLIS asked if there was another way in a background check, besides fingerprinting, the military could identify someone. **Mr. Fasbender** said there was not.

SEN. JON ELLINGSON asked why NCIC was not accessible by name. **Larry Fasbender** said using only a name check didn't give a positive ID because the way it was set up, the fingerprint identified the name of the person. When fingerprints were used in a job application, neither they or the federal government kept them, unless they belonged to criminals.

SEN. ELLINGSON asked if the NCIC would give information based on a person's name and social security number. **Art Pembroke, Justice Information Systems**, said two methods were afforded to law enforcement agencies for obtaining information from national systems: (1) Interstate Identification Index (Triple I), where the name and numeric identifiers could access FBI files to get preliminary "hits". However, this information was not permitted to be used by non-law enforcement or criminal justice purposes;

(2) Fingerprinting, which was the only form of positive identification. He stressed once that information was processed through local, regional or national, it was destroyed; in fact, the FBI sent the information back.

SEN. ELLINGSON asked if the information received in #1 above would be the same as when fingerprints were used. **Mr. Pembroke** said if it were a correct ID, the same information would be gotten from either; however, the only method to give a positive ID for purposes of the National Volunteer for Children Act was fingerprinting.

SEN. ELLINGSON commented the only way to currently get that information for schools' use was through fingerprinting, which was because of the necessity to comply with federal statute. If federal statute were changed, the information could be gotten to be used in school. **Mr. Pembroke** affirmed.

SEN. ELLINGSON referred to **Wayne Buchanan's** testimony about a mother writing a letter regarding a certified Montana teacher involved in sexual abuse and asked if **HB 590** would have affected that person. **Wayne Buchanan** answered in the negative.

SEN. ELLINGSON asked if the information could have been acquired through a thorough background search. **Mr. Buchanan** said if there had been any action against that person's certificate, the Board would have obtained that information through the registry; however, the only way to go through an FBI background check was through fingerprints.

{Tape : 1; Side : B; Approx. Time Counter : 25.3}

SEN. DEBBIE SHEA asked if the bill pertained only to certified employees and **Lance Melton** said it applied to both certified and classified and there were two tiers: (1) Applicants for licensure must submit (it would be a condition of licensure) but at the local level, a school district may require the fingerprinting.

SEN. SHEA asked for the number of non-certified staff who worked with children on a day-to-day basis. **Lance Melton** said he could not guess but he knew the classified staff were less transient than certified.

SEN. SHEA asked how MEA/MFT determined its position. **Phil Campbell** said the Board of Directors of both organizations met and addressed the issue about a month ago. He said their initial stand was opposition to the bill; however, they were informed of the federal law and its applications, which was passed in

October, 1998. Therefore, many changes in the bill took place before the final drafting of the bill and those changes incorporated some of the federal law. After receiving that information, the Boards had a conference call and changed their minds.

SEN. SHEA said MEA/MFT's position did not reflect that of her local union because their position was opposition.

SEN. SHEA asked how many states belonged to Automated Fingerprinting Imaging System (AFIS). **Larry Fasbender** said new NCIC technology allowed them to access fingerprinting information in all states.

SEN. SHEA asked how long it took to get the information. **Mr. Fasbender** said it could take four to six months. That was why they recommended the legislation allow temporary hires until the fingerprints were run.

SEN. JOHN HERTEL asked if the fiscal note had been negotiated. **REP. BOB LAWSON** said the \$60 fee for certification was one-time only; \$32 went to the Department of Justice for the background check processing and \$28 went to OPI for the certification process. He said the fiscal note was designed to keep both the Department of Justice and OPI from "going in the hole."

SEN. BARRY "SPOOK" STANG asked where the money would be, since there was no appropriation. **Lance Melton** said as much language as was possible in respect to appropriation was included in the bill. He said it was premature to deal with HB 2 before **HB 590** passed; therefore, it was their intent to seek an amendment for HB 2.

SEN. STANG asked what would happen if there was no appropriation made in HB 2. **Lance Melton** said bills which were not included in HB 2 were not implemented.

{Tape : 1; Side : B; Approx. Time Counter : 37.1}

SEN. MIKE SPRAGUE said a local NCIC check qualified the item, not the person. **Art Pembroke** agreed.

SEN. SPRAGUE suggested a NCIC check separated the John Does from the bad John Does and **Mr. Pembroke** said it was a method of positive identification.

{Tape : 2; Side : A; Approx. Time Counter : 0}

SEN. ELLINGSON asked if it was correct the Department of Justice destroyed the fingerprints after the investigation. **Art Pembroke** said they were sent back, returned to the individual or shredded.

SEN. ELLINGSON commented in order to get information from NCIC, a copy of the fingerprints would have to be sent. **Mr. Pembroke** affirmed, explaining after the FBI received them and did the check, they were destroyed.

Closing by Sponsor:

REP. BOB LAWSON said there were amendments to strip the CI-75 language from the bill. He said since Montana did not require fingerprinting, he didn't want Montana to be a refuge for people who were fleeing investigation. He suggested fingerprinting was needed to assure identity, especially for out-of-state folks. He said he felt comfortable with **HB 590** and felt no presumption of guilt. He asked any Committee member to carry the bill on the Senate Floor.

HEARING ON HB 588

Sponsor: **REP. BOB LAWSON, HD 80, Whitefish**

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. BOB LAWSON, HD 80, Whitefish, asked that **HB 588** be tabled because it was a CI-75 trailer.

Proponents' Testimony: None.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor: **REP. BOB LAWSON** said he closed.

EXECUTIVE ACTION ON HB 588

Motion/Vote: **SEN. KEENAN** moved that **HB 588 BE TABLED**. Motion carried unanimously 9-0.

ADJOURNMENT

Adjournment: 4:52 P.M.

SEN. DARYL TOEWS, Chairman

JANICE SOFT, Secretary

DT/JS

EXHIBIT (eds54aad)